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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* AMJAD HANIF, BRIAN BURKE,  
and JEFF TAYLOR

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Appeal 2008-1169  
Application 10/749,736  
Technology Center 3600

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Decided: September 30, 2008

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Before LINDA E. HORNER, DAVID B. WALKER, and STEVEN D.A.  
MCCARTHY, *Administrative Patent Judges*.

Opinion by WALKER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. §§ 6(b) and 134(a) (2002) from the final rejection of claims 1-7, 9-25, and 27-34. We affirm-in-part.

Representative claim 1 reads as follows:

1. An apparatus comprising:  
a feedback cancellation request receiver to  
receive a request to cancel feedback pertaining to a

transaction in a network-based transaction facility from a first party to the transaction;

a feedback cancellation criteria evaluator to automatically determine whether one or more feedback cancellation criteria are satisfied;

a feedback cancellation recorder to cancel the feedback pertaining to the transaction if the one or more feedback cancellation criteria are satisfied, the feedback cancellation recorder further to mark the feedback pertaining to the transaction as withdrawn; and

a feedback user interface generator to generate a user interface that presents the feedback pertaining to the transaction and an indication that the feedback pertaining to the transaction is withdrawn.

The reference set forth below is relied upon as evidence in support of the rejection:

Vaidyanathan

US 2004/0128155 A1

Jul. 1, 2004

Claims 1-7, 9-25, and 27-34 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Vaidyanathan. The dispositive issue is whether Vaidyanathan teaches marking the feedback pertaining to the transaction as withdrawn and generating a user interface that presents both the feedback and an indication that the feedback is withdrawn.

#### PRINCIPLES OF LAW

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of ordinary skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 127 S.Ct. at 1734 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”).

In rejecting claims under 35 U.S.C. § 103(a), the examiner bears the initial burden of establishing a prima facie case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). *See also In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the appellant. *Id.* at 1445. *See also Piasecki*, 745 F.2d at 1472. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *See Oetiker*, 977 F.2d at 1445; *Piasecki*, 745 F.2d at 1472.

### ANALYSIS

Each of independent claims 1, 16, and 30 includes a limitation requiring marking the feedback pertaining to the transaction as withdrawn if the one or more feedback cancellation criteria are satisfied and generating a user interface that presents the feedback pertaining to the transaction and an indication that the feedback pertaining to the transaction is withdrawn” (See independent claims 1, 16, and 30).

The Appellants argue that Vaidyanathan does not teach the above limitations. According to Appellants, Vaidyanathan teaches a reputation correction model that interacts with an electronic marketplace to remove or correct feedback, and not marking the feedback as withdrawn as required by the claims on appeal (Br. 10-11, quoting Vaidyanathan [0111]). The Appellants point to Figure 24 of their disclosure for an illustration of the difference between removing the feedback and marking it as withdrawn (Br. 12). In Figure 24, feedback that has been withdrawn is marked with the string ““Withdrawn: Buyer and Seller mutually agreed to withdraw feedback for this item,”” but the original feedback remains visible to the potential buyer. Appellants argue that marking a feedback as withdrawn requires the feedback not be removed, which provides the advantage that potential buyers may evaluate feedback that has not been removed and is marked as withdrawn (Br. 12).

The Examiner concedes that Vaidyanathan does not expressly teach that the feedback user interface generator generates a user interface that presents an indication that the feedback pertaining to the transaction is withdrawn, but takes Official Notice that it is old and well-known in the art of dispute resolution to present the results of a dispute resolution process to involved parties via a user interface. According to the Examiner, this helps to more efficiently inform all involved parties of a dispute resolution outcome in a timely manner. The Examiner found that, since Vaidyanathan keeps both parties informed about the progress of the feedback removal process, it would have been obvious to one of ordinary skill in the art at the time of Appellants' invention to modify Vaidyanathan's feedback user interface generator to generate a user interface that presents an indication

that the feedback pertaining to the transaction is withdrawn in order to more efficiently inform all involved parties of a dispute resolution outcome in a timely manner (Answer 5-6, citing Vaidyanathan, [0109-0112]).

We do not find this argument persuasive. The cited passage makes no mention of marking the feedback as withdrawn, only correcting or removing the feedback if both parties agree. Moreover, the Examiner addresses only the requirement to present an indication that the feedback is withdrawn and does not address the limitation to present *both* the feedback *and* an indication that the feedback is withdrawn, as required by each of the claims on appeal. Our colleague in the dissent finds that “[w]ithin the context of Vaidyanathan’s online dispute resolution system, the parties to a reputation dispute might agree to correct disputed feedback in the form of a comment by adding to the comment a statement that the feedback is withdrawn.” (Dissenting Op. at 9.) We are not persuaded. We find no teaching in Vaidyanathan that describes correcting feedback by marking it as withdrawn. We do not read the disclosure of Vaidyanathan so broadly.

The Examiner responded to the Appellants’ arguments by finding that removing feedback is synonymous with withdrawing feedback (Answer 9). However, as Appellants correctly point out (Br. 12), the operative difference is not between removing and withdrawing, but between removing and marking as withdrawn. The Examiner also rejected the Appellants’ argument that marking the feedback as withdrawn requires the feedback not to be removed as neither expressly recited in the claims nor inherent to marking the feedback as withdrawn (Answer 9-10). We disagree. The claims explicitly require “generating a user interface that presents the feedback pertaining to the transaction and an indication that the feedback

pertaining to the transaction is withdrawn.” In order for both the feedback and an indication that the feedback is withdrawn to be presented, the feedback cannot be removed when the feedback is marked as withdrawn.

The Examiner further found that since Vaidyanathan automates ““the removal or correction of feedback initially provided by one or both of the parties (152),”” Vaidyanathan at the very least electronically indicates, characterizes, distinguishes, and/or signalizes (i.e., marks) the feedback to be cancelled as withdrawn (Answer 9). We do not find this logic persuasive, because we find no teaching or suggestion in Vaidyanathan to so mark the feedback or to generate a user interface to present both the feedback and an indication that the feedback has been withdrawn. Because each of independent claims 1, 16, and 30 includes the disputed claim limitations, the Examiner has failed to establish a prima facie case of obviousness of claims 1-7, 9, 16-25, and 27-34 over Vaidyanathan.

Independent claim 10 requires a different analysis. Strictly speaking, claim 10 recites the combination of a memory and a processor coupled to the memory, in which the processor is to be put to several new intended uses. Claim 10 does not recite that the processor is programmed to be put to these uses or that the memory contains instructions for these uses. “It is well settled that the recitation of a new intended use for an old product does not make a claim to that old product patentable,” *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997). Vaidyanathan teaches the combination of a database (memory) and a server (processor) operatively coupled to the database (Vaidyanathan 6, ¶ 0061). Vaidyanathan’s server is capable of being programmed to perform the new intended uses recited in claim 10. Appellants thus have not shown the Examiner erred in rejecting claim 10 as

obvious over Vaidyanathan. Claims 11-15 are not argued separately and thus fall with claim 10. *See* 37 C.F.R. § 41.37(c)(1)(vii)(2007). *See also In re Young*, 927 F.2d 588, 590 (Fed. Cir. 1991).

### CONCLUSIONS

We conclude that Appellants have not shown that the Examiner erred in rejecting claims 10-15 under 35 U.S.C. § 103(a) as unpatentable over Vaidyanathan. We conclude that Appellants have shown that the Examiner erred in rejecting claims 1-7, 9, 16-25, and 27-34 under 35 U.S.C. § 103(a) as unpatentable over Vaidyanathan.

### DECISION

The decision of the Examiner to reject claims 10-15 is affirmed. The decision of the Examiner to reject claims 1-7, 9, 16-25, and 27-34 is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

### AFFIRMED-IN-PART

McCarthy, *Administrative Patent Judge, dissenting.*

I agree with my colleagues that the Appellants have shown error in the rejection of method claims 16-25 and 27-34 under 35 U.S.C. § 103(a) (2002) as being unpatentable over Vaidyanathan. I also agree with my colleagues that the Appellants have not shown error in the rejection of system claims 10-15. I do not agree with my colleagues that the Appellants have shown error in the rejection of apparatus claims 1-7 and 9. Since I would affirm the rejection of these claims, I dissent.

I find it significant that the only claim which the Appellants explicitly argue is independent method claim 16. (*See* App. Br. 10-12.) With regard to method claim 16, the Appellants contend that Vaidyanathan does not disclose or suggest the steps of “marking the feedback pertaining to the transaction as withdrawn” and “generating a user interface that presents the feedback pertaining to the transaction and an indication that the feedback pertaining to the transaction is withdrawn.” (App. Br. 10.) It is my understanding that the majority reverses the rejection of claim 1 on the basis that an apparatus including “a feedback cancellation recorder . . . to mark the feedback pertaining to the transaction as withdrawn” and “a feedback user interface generator to generate a user interface that presents the feedback pertaining to the transaction and an indication that the feedback pertaining to the transaction is withdrawn” would not have been obvious to those of ordinary skill in the art.

Vaidyanathan discloses an online dispute resolution system for resolving disputes in electronic commerce. (Vaidyanathan 6, ¶ 0060.) Vaidyanathan’s system includes an application server operatively coupled to

a dispute database. (Vaidyanathan 6, ¶ 0061.) The application server is connected through a web server to a network such as the Internet. (*Id.*)

The reference teaches that it was known for an online marketplace to maintain an online reputation system. (Vaidyanathan 1, ¶ 0010.) The reference suggests that such online reputation systems receive and post feedback in the form of comments pertaining to transactions on the online marketplace. (*E.g.*, Vaidyanathan, Fig. 44.) Vaidyanathan teaches that reputation disputes may arise involving retraction of negative or positive feedback. (Vaidyanathan 1-2, ¶ 0010.)

One function performed by Vaidyanathan's online dispute resolution system is to make a determination as to whether the parties have agreed to remove or correct the feedback. (Vaidyanathan 12, ¶ 0109.) If the parties agree to remove or change the feedback under dispute, the reputation correction module tests the case to confirm whether the rules of the online marketplace allow the dispute resolution process to be closed with an automated process. (*Id.*) If the process is automated or if the parties agree to reputation repair, a reputation correction module in the online dispute resolution system interacts with the online marketplace to automate the removal or correction of the feedback. (Vaidyanathan 12, ¶ 0111.)

The reputation correction module corresponds to the feedback cancellation recorder recited in claim 1. Within the context of Vaidyanathan's online dispute resolution system, the parties to a reputation dispute might agree to correct disputed feedback in the form of a comment by adding to the comment a statement that the feedback is withdrawn. By means of such a correction, the reputation correction module would mark the comment as withdrawn. Moreover, since Vaidyanathan teaches that

feedback may be published to the entire community associated with the online marketplace (Vaidyanathan, Fig. 41), it would have been obvious to provide a feedback user interface generator to generate a user interface that presented the feedback pertaining to the transaction out of which the reputation dispute arose. Were the feedback to take the form of a comment and were that comment corrected by adding a statement that the comment is withdrawn, the same user interface which displayed the feedback would display an indication, namely, the added statement, indicating that the feedback is withdrawn.

The Appellants rely on the distinction between marking feedback as withdrawn and removing feedback as a feature distinguishing the subject matter of claim 1 from the teachings of Vaidyanathan. (App. Br. 11). I do not agree that this distinction is a patentable distinction. Nonfunctional descriptive material cannot render nonobvious apparatus that otherwise would have been obvious. *In re Ngai*, 367 F.3d 1336, 1339 (Fed. Cir. 2004); *cf. In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983) (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability). Claim 1 is an apparatus claim. The content of feedback such as comments stored in memory in the apparatus would constitute nonfunctional descriptive material in the sense that the operation of the online marketplace and the online dispute resolution system would not depend on the content of the feedback. While a reputation dispute might be driven by the content of feedback, nothing in Vaidyanathan suggests that the manner in which Vaidyanathan's system would apply the rules of the online marketplace and, if in accordance with the rules, automatically implement the agreement

between disputing parties would depend on the content driving the dispute. Since the feedback would be nonfunctional descriptive material, any correction to the feedback would be nonfunctional descriptive material. Vaidyanathan teaches correcting feedback in response to an agreement of the parties; and the distinction between, for example, correcting a posted comment by modifying the existing content and correcting a comment by adding a statement that the comment is withdrawn could not render the subject matter of claim 1 patentable over Vaidyanathan.

Since the Appellants do not present any arguments suggesting that dependent apparatus claims 2-7 and 9 might be patentable separately from independent claim 1, I would affirm the rejections of claims 1-7 and 9-15. For this reason, I dissent.

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